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10 And Catherine Richardson

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 CRAIG CHAQUICO,
15
16 Plaintiff,

17 vs.

18 DAVID FREIBERG, an Individual; DONNY
19 BALDWIN, an Individual; CHRIS SMITH, an
20 Individual; JUDE GOLD, an Individual;
21 CATHERINE RICHARDSON, an Individual;
22 and DOES 1 to 20,
23
24 Defendants.

Case No.: 3:17 CV 02423 MEJ

**STIPULATED PROTECTIVE ORDER
REGARDING THE DISCLOSURE AND USE
OF DISCOVERY MATERIALS**

Courtroom B, 15th Floor

Judge Maria-Elena James

Trial Date: None

1 Defendants David Freiberg (“Freiberg”), Donny Baldwin (“Baldwin”), Chris Smith
2 (“Smith”), Jude Gold (“Gold”), and Catherine Richardson (“Richardson”) (herein after
3 collectively referred to a “Jefferson Starship” or “Defendants”) anticipate that documents,
4 testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or
5 commercial sensitive information are likely to be disclosed or produced during the course of
6 discovery, initial disclosures, and supplemental disclosures in this case and request that the Court
7 enter this Order setting forth the conditions for treating, obtaining, and using such information.
8

9 Pursuant to Rule 26(c), the Court finds good cause for the following Agreed Protective
10 Order Regarding the Disclosure and Use of Discovery Materials (“Order” or “Protective Order”).

11 **1. PURPOSES AND LIMITATIONS**

12 Disclosure and discovery activity in this action are likely to involve production of confidential,
13 proprietary, or private information for which special protection from public disclosure and from use for
14 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
15 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
16 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
17 discovery and that the protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the applicable legal principles. The
19 parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does
20 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
21 that must be followed and the standards that will be applied when a party seeks permission from the court
22 to file material under seal.
23

24 **2. DEFINITIONS**

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
26 items under this Order.

27 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
28 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure

1 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
3 their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
8 manner in which it is generated, stored, or maintained (including, among other things, testimony,
9 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in
10 this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
12 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
13 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3)
14 at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

15 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
16 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
17 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

18 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
19 not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but
21 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
22 party or are affiliated with a law firm which has appeared on behalf of that party.

23 2.10 Party: any party to this action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
26 this action.

1 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
3 retrieving data in any form or medium) and their employees and subcontractors.

4 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” 2.14

6 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

7
8 **3. SCOPE**

9 The protections conferred by this Stipulation and Order cover not only Protected Material (as
10 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
11 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
13 conferred by this Stipulation and Order do not cover the following information: (a) any information that is
14 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain
15 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,
16 including becoming part of the public record through trial or otherwise; and (b) any information known to
17 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a
18 source who obtained the information lawfully and under no obligation of confidentiality to the
19 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or
20 order.

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
23 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
24 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
25 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
26 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any
27 motions or applications for extension of time pursuant to applicable law.

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
3 Party that designates information or items for protection under this Order must take care to limit any such
4 designation to specific material that qualifies under the appropriate standards. To the extent it is practical
5 to do so, the Designating Party must designate for protection only those parts of material, documents,
6 items, or oral or written communications that qualify – so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept unjustifiably within the
8 ambit of this Order.
9

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
11 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
12 retard the case development process or to impose unnecessary expenses and burdens on other parties)
13 expose the Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items that it designated for
15 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
16 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken
17 designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
19 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
20 Discovery Material that qualifies for protection under this Order must be clearly so designated before the
21 material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix
25 the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each
26 page that contains protected material. If only a portion or portions of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
28

1 appropriate markings in the margins) and must specify, for each portion, the level of protection being
2 asserted.

3 A Party or Non-Party that makes original documents or materials available for inspection need
4 not designate them for protection until after the inspecting Party has indicated which material it would
5 like copied and produced. During the inspection and before the designation, all of the material made
6 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
7 After the inspecting Party has identified the documents it wants copied and produced, the Producing Party
8 must determine which documents, or portions thereof, qualify for protection under this Order. Then,
9 before producing the specified documents, the Producing Party must affix the appropriate legend
10 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page
11 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
12 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
13 appropriate markings in the margins) and must specify, for each portion, the level of protection being
14 asserted.
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16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
17 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,
18 all protected testimony and specify the level of protection being asserted. When it is impractical to
19 identify separately each portion of testimony that is entitled to protection and it appears that substantial
20 portions of the testimony may qualify for protection, the Designating Party may invoke on the record
21 (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify
22 the specific portions of the testimony as to which protection is sought and to specify the level of
23 protection being asserted. Only those portions of the testimony that are appropriately designated for
24 protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order.
25 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period
26 is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
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1 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
2 other proceeding to include Protected Material so that the other parties can ensure that only
3 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
5 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.”

7
8 Transcripts containing Protected Material shall have an obvious legend on the title page
9 that the transcript contains Protected Material, and the title page shall be followed by a list of all
10 pages (including line numbers as appropriate) that have been designated as Protected Material and
11 the level of protection being asserted by the Designating Party. The Designating Party shall inform
12 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
13 21-day period for designation shall be treated during that period as if it had been designated
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
15 agreed. After the expiration of that period, the transcript shall be treated only as actually
16 designated.

17 (c) for information produced in some form other than documentary and for any other
18 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
19 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” . If only a portion or portions of the information or
21 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
22 portion(s) and specify the level of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
24 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
25 protection under this Order for such material. Upon timely correction of a designation, the Receiving
26 Party must make reasonable efforts to assure that the material is treated in accordance with the provisions
27 of this Order.
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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
4 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation
5 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
6 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
7 designation by electing not to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
9 providing written notice of each designation it is challenging and describing the basis for each challenge.
10 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
11 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
12 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
13 conferring directly, in person, within 14 days of the date of service of notice, and shall otherwise meet
14 and confer in compliance with the Discovery Standing Order for Magistrate Judge Maria-Elena James and
15 applicable Federal and Local Rules. In conferring, the Challenging Party must explain the basis for its
16 belief that the confidentiality designation was not proper and must give the Designating Party an
17 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
18 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
19 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
20 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
21 manner.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
23 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
24 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
25 Designating Party has waived the confidentiality designation by failing to file a motion to retain
26 confidentiality as described above, all parties shall continue to afford the material in question the level of
27 protection to which it is entitled under the Producing Party's designation until the court rules on the
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1 challenge.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
3 they shall comply with the Discovery Standing Order for Magistrate Judge Maria-Elena James and
4 applicable Federal and Local Rules. Specifically, the parties shall file a joint letter to the Court which
5 contains the following: a) A cover page with the caption, an attestation that the parties met and conferred
6 in person in a good faith attempt to resolve their disputes(s) prior to file the letter, and the signature of
7 both parties or counsel; b) a joint section setting forth the pertinent factual background and unresolved
8 dispute; c) a detailed summary of each party's position, including citations to relevant legal authority; and
9 d) each party's proposed compromise on the issue(s) in dispute. The joint letter should be limited to five
10 pages, excluding the cover page, and may not be accompanied by exhibits or affidavits other than exact
11 copies of interrogatories, requests for production of documents and/or responses, privilege logs, and
12 relevant deposition testimony. It is preferable that the parties file a separate letter for each dispute.
13

14 If the parties are unable to meet and confer as directed above, or the moving party is unable to
15 obtain the opposing party's portion of the joint letter after the meet and confer session, the moving party
16 shall file a written request for a telephonic conference for the purpose of enforcing the Court's meet and
17 confer requirement, or for the Court to fashion an alternative procedure. The written request shall include
18 a declaration which states any attempt to meet and confer and/or obtain the joint letter, the reasons for the
19 inability to comply with the standing order, and (if possible) three dates and times during which all parties
20 are available for a telephonic conference. The moving party may attach exhibits to the declaration, but
21 the declaration and exhibits combined may not exceed seven pages. The Court will not execute a party
22 from the requisite in-person meeting unless good cause is shown.

23 In the event the parties are participating in a deposition or a site inspection and a dispute arises,
24 the parties may contact the courtroom deputy, Rose Maher, to inquire whether Magistrate Judge James is
25 available to address the dispute telephonically. In the event she is unavailable, the parties shall follow the
26 procedures for requesting a telephonic conference as set forth above. In such a case, the deposition or site
27 inspection shall proceed with objections noted for record.
28

1 No motion for sanctions may be filed until after the moving party has complied with the
2 requirements set forth above. Motions for sanctions shall be filed separately, pursuant to Federal Rule 37
3 and Civil Local Rules 7 and 37-3. The parties shall comply with Civil Local Rule 6 regarding any
4 requests to change time. Pursuant to Civil Local Rule 11-4(c), with the exception of communication with
5 the courtroom deputy regarding scheduling, no party may contact the Court ex parte without prior notice
6 to the opposing party. All communications or questions to the Court shall be presented in writing,
7 properly filed, and include a certification that all parties were served. The parties do not need to submit
8 chambers copies, with the exception of documents that exceed ten pages when combined. For these
9 documents only, the submitting party must comply with the timing requirements in Civil Local Rule 5-
10 1(e)(7). All chambers copies must be double-sided when possible and included (1) the running header
11 created by the ECF system at the top of each page, and (2) exhibits, if any, that are clearly delineated with
12 tabbed dividers. These printed copies shall be marked "Chambers Copy" and submitted to the Clerk's
13 Office (not chambers), in an envelope marked with "Magistrate Judge James," the case number, and
14 "Chambers Copy."

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16
17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
18 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
19 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
20 persons and under the conditions described in this Order. When the litigation has been terminated, a
21 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a location and in a
23 secure manner¹ that ensures that access is limited to the persons authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
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28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in
password-protected form.

1 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
2 item designated "CONFIDENTIAL" only itself and to:

3 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
4 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
5 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
6 hereto as Exhibit A;

7 (b) the officers, directors, and employees (including House Counsel) of the Receiving
8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
10

11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
12 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
13 Bound" (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants, and Professional
16 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
19 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
20 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
21 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
22 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a custodian or
24 other person who otherwise possessed or knew the information.

25 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
26 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
27 Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –
28

1 ATTORNEYS' EYES ONLY" only to:

2 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
3 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
5 hereto as Exhibit A;

6 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
7 this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and
8 (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

9 (c) the court and its personnel;

10 (d) court reporters and their staff, professional jury or trial consultants, and Professional
11 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
12 "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

13 (e) the author or recipient of a document containing the information or a custodian or
14 other person who otherwise possessed or knew the information.

15 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" Information or Items to Experts.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
19 has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to
20 paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general
21 categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information that the
22 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
23 the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4)
24 identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has
25 received compensation or funding for work in his or her areas of expertise or to whom the expert has
26 provided professional services, including in connection with a litigation, at any time during the preceding
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1 five years,² and (6) identifies (by name and number of the case, filing date, and location of court) any
2 litigation in connection with which the Expert has offered expert testimony, including through a
3 declaration, report, or testimony at a deposition or trial, during the preceding five years.
4

5 (b) A Party that makes a request and provides the information specified in the preceding
6 respective paragraphs may disclose the subject Protected Material to the identified Designated House
7 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection
8 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the
10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
11 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
12 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
13 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
14 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the
15 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any
16 additional means that could be used to reduce that risk. In addition, any such motion must be
17 accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement
18 (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced
19 by the Designating Party for its refusal to approve the disclosure.

20 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
21 proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs
22 the Receiving Party's need to disclose the Protected Material to its Expert.
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27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the
Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such
engagement.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
2 **LITIGATION**

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4 If a Party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

7 (a) promptly notify in writing the Designating Party. Such notification shall include a
8 copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
10 other litigation that some or all of the material covered by the subpoena or order is subject to this
11 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
13 Designating Party whose Protected Material may be affected.³

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
17 determination by the court from which the subpoena or order issued, unless the Party has obtained the
18 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material – and nothing in these provisions should be construed
20 as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another
21 court.
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27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
2 **LITIGATION**

3
4 (a) The terms of this Order are applicable to information produced by a Non-Party in
5 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected
7 by the remedies and relief provided by this Order. Nothing in these provisions should be construed as
8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to produce a
10 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the
11 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

12 1. promptly notify in writing the Requesting Party and the Non-Party that some or
13 all of the information requested is subject to a confidentiality agreement with a Non-Party;

14 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
15 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
16 requested; and

17 3. make the information requested available for inspection by the Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this court within
19 14 days of receiving the notice and accompanying information, the Receiving Party may produce the
20 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a
21 protective order, the Receiving Party shall not produce any information in its possession or control that is
22 subject to the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a
23 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
24 court of its Protected Material.

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28 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to
afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the
4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
6 the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
7 request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
8 attached hereto as Exhibit A.
9

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
11 **MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
14 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
15 to modify whatever procedure may be established in an e-discovery order that provides for production
16 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties
17 reach an agreement on the effect of disclosure of a communication or information covered by the
18 attorney-client privilege or work product protection, the parties may incorporate their agreement in the
19 stipulated protective order submitted to the court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
22 modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
24 Party waives any right it otherwise would have to object to disclosing or producing any information or
25 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right
26 to object on any ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating Party or a
28

1 court order secured after appropriate notice to all interested persons, a Party may not file in the public
2 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
3 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
4 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule
5 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is
6 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
7 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the
8 court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil
9 Local Rule 79-5(e)(2) unless otherwise instructed by the court.

10
11 **13. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
13 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries,
15 and any other format reproducing or capturing any of the Protected Material. Whether the Protected
16 Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing
17 Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1)
18 identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and
19 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
20 other format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
21 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
23 attorney work product, and consultant and expert work product, even if such materials contain Protected
24 Material. Any such archival copies that contain or constitute Protected Material remain subject to this
25 Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 DATED: November 3, 2017

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP

4
5 /s/ David Swift

David Swift

6 *Attorneys for Plaintiff*
7 *Craig Chaquico*

8
9 DATED: November 3, 2017

LEAVENS, STRAND & GLOVER, LLC

10 /s/ Travis W. Life

Travis W. Life

11 *Attorney for Defendants*
12 *David Frieberg, Donny Baldwin, Chris Smith,*
13 *Jude Gold, and Catherine Richardson*

14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15
16 DATED: November 6, 2017


17 HON. MARIA-ELENA JAMES
18 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of **Chaquico v. Freiberg, et al. Case No. 3:19 CV 02423**
7 **MEJ**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
8 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in
9 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item
10 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with
11 the provisions of this Order.
12

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
15 even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone number] as my
18 California agent for service of process in connection with this action or any proceedings related to
19 enforcement of this Stipulated Protective Order.
20

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]